

Before the  
COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ALLTEL Communications, Inc.  
Petition for Designation as an Eligible  
Telecommunications Carrier in the State of  
Florida

DA 04-998

## REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.

Cheryl A. Tritt  
Frank W. Krogh  
Jennifer L. Kostyu  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Suite 5500  
Washington, D.C. 20007  
(202) 887-1500

Counsel to ALLTEL Communications, Inc.

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia	)	DA 03-1881, 04-998
	)	
ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama	)	DA 03-1882, 04-998
	)	
ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina	)	DA 03-3824, 04-998
	)	
ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia	)	DA 03-3825, 04-998
	)	
ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida	)	DA 04-998

**REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.**

ALLTEL Communications, Inc. (“ALLTEL”) replies to oppositions filed by CenturyTel of Alabama, LLC (“CenturyTel”) and Verizon to ALLTEL’s applications for designation as an eligible telecommunications carrier (“ETC”) in non-rural portions of Virginia, Alabama, North Carolina, Georgia and Florida (collectively, the “Petitions”).<sup>1</sup>

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<sup>1</sup> Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Virginia, CC Docket No. 96-45 (filed Apr. 14, 2003, amended May 21, 2003) (“Virginia Petition”); Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (Apr. 14, 2003, amended May 21, 2003) (“Alabama Petition”); Application of

## I. INTRODUCTION AND SUMMARY.

The opposing comments (collectively, “Oppositions”) are repetitive of numerous prior filings, procedurally defective and apparently filed solely to delay the development of competition in the markets at issue. Verizon’s filing generically opposes all pending ETC applications,<sup>2</sup> while CenturyTel specifically opposes ALLTEL’s Petition for ETC status in non-rural portions of Alabama.<sup>3</sup> Although the Commission’s public notice (“*ETC Public Notice*”)<sup>4</sup> expressly sought comment on the pending ETC petitions as supplemented, the Oppositions neither acknowledge that ALLTEL, in fact, supplemented its Petitions to meet the new *Virginia Cellular*<sup>5</sup> criteria with regard to ETC petitions (“ETC Supplement”),<sup>6</sup> nor do they substantively address any of the showings contained in the ETC Supplement.

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ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45 (filed Aug. 26, 2003); Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia, CC Docket No. 96-45 (filed Aug. 26, 2003, amended Sept. 15, 2003); Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed Nov. 20, 2003) (“Florida Petition”).

<sup>2</sup> Opposition of Verizon, *Federal-State Joint Board on Universal Service, Supplemented Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45 (May 7, 2004) (“Verizon Comments”). Much of Verizon’s Comments, especially its arguments regarding supplementing pending petitions to address rural creamskimming is inapplicable to ALLTEL’s Petitions which seek ETC status in non-rural areas.

<sup>3</sup> Comments of CenturyTel of Alabama, LLC, *Federal-State Joint Board on Universal Service, ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (May 7, 2004) (“CenturyTel Comments”).

<sup>4</sup> FCC Public Notice, *Parties are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-998 (Apr. 12, 2004) (“*ETC Public Notice*”). The *ETC Public Notice* was published in the Federal Register on April 23, 2004, inviting interested parties to file comments on May 7, 2004, and reply comments on May 14, 2004. 69 Fed. Reg. 22031 (Apr. 23, 2004).

<sup>5</sup> *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) (“*Virginia Cellular*”).

<sup>6</sup> See Letter from G. Rabin, Vice President & Federal Communications Counsel, ALLTEL, to M. Dortch, Sec., Federal Communications Commission, CC Docket No. 96-45, DA Nos. 03-1881,

Instead, the Oppositions repeat the same arguments that the opponents previously raised, and to which ALLTEL had previously responded, prior to *Virginia Cellular*. The Oppositions reference *Virginia Cellular* largely in an attempt to obscure the distinction established by *Virginia Cellular* between the public interest standards for rural and non-rural ETC applications and, in the case of Verizon, to include an irrelevant, untimely response to Sprint Corporation's ("Sprint's") petition for reconsideration of *Virginia Cellular*.<sup>7</sup> Other than unspecified expressions of dissatisfaction with ALLTEL's compliance with the appropriate standards, the Oppositions thus never directly address ALLTEL's showing in the ETC Supplement that its service commitments meet *Virginia Cellular's* and *Highland Cellular's*<sup>8</sup> public interest standard for rural ETC applications and thus the less rigorous standard set forth in those orders for non-rural applications.

Many of the Oppositions' claims are nothing more than untimely challenges to the Commission's *Virginia Cellular* and *Highland Cellular* holdings, as well as prior precedents, or responses to issues of general prospective applicability raised in the *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board") on ETC issues.<sup>9</sup> Moreover, the Commission has repeatedly rejected the Oppositions' argument that the Commission should delay consideration of ALLTEL's and all other pending ETC petitions until the Commission concludes its review of the *Recommended Decision*. Section 214(e) of the Communications Act of 1934, as amended (the "Act") and applicable Commission precedent -- including an order

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03-1882, 03-3824, 03-3825 (Mar. 1, 2004) (supplementing ALLTEL's non-rural requests for ETC status) ("ETC Supplement").

<sup>7</sup> Petition for Reconsideration of Sprint Corporation, *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45 (Feb. 23, 2004).

<sup>8</sup> *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. Apr. 12, 2004) ("*Highland Cellular*").

<sup>9</sup> *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, FCC 04J-1 (Feb. 27, 2004) ("*Recommended Decision*").

granting ETC status to Verizon Wireless in Delaware -- rebut the Oppositions' arguments for delay. The Oppositions' repetitious arguments fail to demonstrate why the Commission should depart from its precedent in deciding the Petitions.

The Oppositions also provide no legal or factual support for their bald assertions that grant of the Petitions would harm the high-cost universal service support mechanisms. The Petitions at issue seek ETC status for non-rural markets, and, hence, the proper focus should be on the capped interstate access support fund expressly made portable under the CALLS Plan and not on the high-cost funds generally.

The Oppositions thus are a transparent attempt to further delay consideration of the Petitions and thereby further delay the benefits of intermodal competition, to the detriment of consumers. Accordingly, ALLTEL urges the Commission (or the Wireline Competition Bureau on delegated authority) to grant the Petitions as to non-rural areas without further delay.

## **II. BACKGROUND.**

ALLTEL is currently both a recipient of universal service support as a local exchange carrier ("LEC") and wireless carrier and a contributor to universal service funding as a wireline and wireless carrier. ALLTEL affiliates encompass both rural and non-rural wireline incumbent LECs ("ILECs"), as well as its wireless service operators. Consequently, ALLTEL's Petitions reflect a number of perspectives on the complex funding needs of carriers serving high-cost areas. ALLTEL's Virginia, Alabama, North Carolina and Georgia Petitions originally sought ETC status in both rural and non-rural portions of those states. ALLTEL subsequently bifurcated those Petitions into separate requests for ETC designation in non-rural and rural service areas.<sup>10</sup> ALLTEL's Florida Petition similarly requested that the Commission consider its request for ETC status on a bifurcated basis.<sup>11</sup>

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<sup>10</sup> See Letter from C. Tritt, Counsel, ALLTEL, to M. Dortch, Sec., Federal Communications Commission, CC Docket No. 96-45, DA Nos. 03-1881, 03-1882 (Nov. 10, 2003).

<sup>11</sup> Florida Petition at 1.

On March 1, 2004, ALLTEL filed its ETC Supplement, in which it made the same commitments for its non-rural ETC requests that Virginia Cellular (and later Highland Cellular) made with respect to their rural ETC requests. With respect to its non-rural ETC service areas, ALLTEL specifically committed to: (1) abide by CTIA's Consumer Code for Wireless Services; (2) report annually the number of consumer complaints it receives; (3) take multiple steps in order to respond to service requests by potential customers and to report annually the number of service requests it refuses; (4) build out its existing network using high cost universal service funds; and (5) expand its advertising of ETC-related services to include local unemployment, social security and welfare offices.<sup>12</sup> ALLTEL also demonstrated why its commitments meet the public interest standard set forth in *Virginia Cellular* for non-rural service areas.

### **III. ALLTEL DEMONSTRATED THAT ITS DESIGNATION AS AN ETC IN NON-RURAL AREAS ADVANCES COMPETITION AND SERVES THE PUBLIC INTEREST.**

#### **A. The Oppositions Are Substantively And Procedurally Defective.**

In the *ETC Public Notice*, the Commission sought comment on ALLTEL's Petitions and the other pending ETC petitions, as supplemented, "in light of the new standards and requirements set forth in the *Virginia Cellular Order*."<sup>13</sup> Thus, commenters were to address whether the supplemented petitions meet the new public interest standards established in *Virginia Cellular* and *Highland Cellular*. Neither Opposition, however, addresses this essential issue. Instead, the opponents: (1) restate arguments that were raised earlier, without taking cognizance of the intervening release of *Virginia Cellular* and *Highland Cellular* or the filing of the ETC Supplement;<sup>14</sup> (2) untimely attack the Commission's holdings in *Virginia Cellular* and

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<sup>12</sup> ETC Supplement at 4-6.

<sup>13</sup> See *ETC Public Notice* at 2.

<sup>14</sup> See, e.g., CenturyTel Comments at 5 -6 (stating that ALLTEL's designation as an ETC provides no public benefits); *Id.* (arguing that ALLTEL must provide a certain level of local usage in order to receive ETC status). ALLTEL previously addressed all of these issues in its Alabama Petition and its reply comments concerning its Alabama and Virginia Petitions. Reply Comments of ALLTEL Communications, Inc., Petitions for Designation as an Eligible

*Highland Cellular*;<sup>15</sup> or (3) comment on the Joint Board’s *Recommended Decision*.<sup>16</sup> Thus, the opponents fail to comment substantively on the ETC Supplement. Because their arguments are untimely filed objections or comments directed to other proceedings and fail to address the issue on which comment was sought in this proceeding, the Commission should summarily dismiss the Oppositions.

Opponents also argue that the non-rural ETC public interest standard is higher than that established in *Virginia Cellular* and *Highland Cellular*.<sup>17</sup> In *Virginia Cellular* and *Highland Cellular*, however, the Commission recognized that the public interest standard for non-rural ETC petitions is less rigorous than the standard for rural areas.<sup>18</sup> The opponents should have sought reconsideration of *Virginia Cellular* and *Highland Cellular* if they disagreed with the distinction established in those orders between the public interest standards applicable to rural and non-rural ETC applications. The Oppositions’ attempts to raise the non-rural standard must be rejected. Moreover, the Oppositions manifestly fail to identify any additional public interest factors that ALLTEL has failed to meet.

In an effort to buttress its argument as to the appropriate public interest standard, Verizon improperly uses its Opposition as an untimely challenge to Sprint’s petition for reconsideration

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Telecommunications Carrier in the States of Virginia and Alabama (July 14, 2003) (“Virginia/Alabama Reply”).

<sup>15</sup> See, e.g., CenturyTel Comments at 2-3 (arguing that the commitments and obligations approved in *Virginia Cellular* do not demonstrate that ETC status is in the public interest); Verizon Comments at 5-10 (objecting to the public interest framework adopted in *Virginia Cellular*).

<sup>16</sup> See, e.g., CenturyTel Comments at 3-4 and Verizon Comments at 2-5 (arguing that granting all ETC petitions will harm the high-cost universal service funds); CenturyTel Comments at 6 (asserting that the Commission should adopt safeguards to prevent alleged abuse of allocating high-cost funds based upon a wireless customer’s billing address, which ALLTEL previously addressed in its Virginia/Alabama Reply).

<sup>17</sup> For example, Verizon argues that carriers seeking ETC status in non-rural areas must satisfy the higher public interest showing established for rural areas in *Virginia Cellular*. Verizon Comments at 9.

<sup>18</sup> *Virginia Cellular*, 19 FCC Rcd at 1575; *Highland Cellular* ¶ 21.



of *Virginia Cellular*.<sup>19</sup> Having chosen not to oppose Sprint's petition, Verizon may not take another bite at the apple in the guise of opposing ALLTEL's Petitions, and its untimely arguments directed at the public interest standard set forth in *Virginia Cellular* should be disregarded.

The Verizon Opposition's assertion that ALLTEL's Petitions and the other ETC applications pending before the Commission will have a detrimental effect on high-cost support, including the interstate access support ("IAS") fund established in the *CALLS Order*,<sup>20</sup> is misleading and incorrect. Verizon's attempt to calculate the additional amounts of high-cost support that will be necessary if all of the pending wireless ETC applications are granted<sup>21</sup> assume, with no support whatsoever, that wireless ETCs would report the same number of subscriber lines as the incumbent in the same service area. Because wireless ETCs can only receive universal support for the actual number of subscriber lines they serve,<sup>22</sup> a wireless ETC will receive significantly less support than the incumbent wireline carrier serving the same area. Thus, Verizon's estimates are highly exaggerated and should be disregarded.

**B. ALLTEL's Non-Rural Commitments Meet The More Stringent Public Interest Standard Established In *Virginia Cellular* and *Highland Cellular* For Rural Areas.**

CenturyTel asserts without support that the commitments ALLTEL made in its ETC Supplement with regard to its petitions for ETC status in non-rural areas are non-binding and do

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<sup>19</sup> Verizon Comments at 5-10.

<sup>20</sup> *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) (subsequent history omitted) ("*CALLS Order*").

<sup>21</sup> See Verizon Comments at 2-5 and Attachment B.

<sup>22</sup> See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8932 (1997) (concluding that competitive ETCs should receive universal service support only to the extent it captures subscriber lines formerly served by incumbents or new customer lines) ("*Universal Service Order*").

not serve the public interest.<sup>23</sup> Virginia Cellular and Highland Cellular, however, made substantially similar commitments in order to demonstrate that the public interest will be served by their designation as ETCs in *rural* areas.<sup>24</sup> The Commission concluded that such detailed commitments more than satisfy the public interest requirements for non-rural areas.<sup>25</sup> Furthermore, a number of ALLTEL's commitments include reports to the Commission, which provide a simple way of monitoring ALLTEL's compliance. The Commission also can revoke ALLTEL's ETC designations or take enforcement action if ALLTEL fails to abide by its obligations. ALLTEL's commitments for its non-rural Petitions thus exceed the public interest showing that the Commission adopted for non-rural service areas in *Virginia Cellular* and *Highland Cellular*.

**C. ALLTEL Has Demonstrated Repeatedly That Granting It ETC Status In Non-Rural Areas Will Benefit Competition And Serve The Public Interest.**

ALLTEL has repeatedly demonstrated that its designation as an ETC in non-rural portions of each state, including Alabama, serves the public interest<sup>26</sup> by increasing competition, which results in: (1) greater consumer choices for telecommunications services, (2) promotion of higher quality services, (3) lower rates, (4) deployment of new technologies, and (5) greater opportunity for consumers to select a telecommunications provider based upon quality of service, availability of service, and rates. In granting Verizon's own wireless affiliate ETC status in Delaware, the Commission explained the importance of competition in non-rural markets:

[A]n important goal of the Act is to open local telecommunications markets to competition. In requiring the Commission to designate, upon request and where the state commission lacks jurisdiction, more than one

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<sup>23</sup> CenturyTel Comments at 3. CenturyTel also appears to argue that its non-rural areas are really rural and that ALLTEL thus should meet a higher public interest showing for ETC status. *Id.* CenturyTel provides no legal or factual support for this assertion, and it should be disregarded.

<sup>24</sup> *Virginia Cellular*, 19 FCC Rcd at 1570-71, 1574, 1584-85; *Highland Cellular* ¶¶ 15-17, 19, 43.

<sup>25</sup> *Virginia Cellular*, 19 FCC Rcd at 1575; *Highland Cellular* ¶ 21.

<sup>26</sup> *See, e.g.*, Alabama Petition at 11; Virginia/ Alabama Reply at 16-21.

common carrier in areas served by non-rural carriers, we believe Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies.<sup>27</sup>

The mobility of wireless services also protects the public's health and welfare and likely will save lives because consumers will be able to obtain help in emergencies or other circumstances much more quickly by using a mobile phone.<sup>28</sup>

Despite CenturyTel's contention, the fact that ALLTEL already provides wireless service in the area for which it seeks ETC status does not preclude a finding that ETC designation will bring public benefits. ALLTEL's designation as an ETC in its non-rural service area will put it on an equal footing with the incumbent carriers and allow it to compete more effectively.<sup>29</sup> Moreover, ALLTEL will be able to use the universal service funding it receives to build out its network in unserved areas, as indicated in the ETC Supplement. The public will reap the benefits from additional competition and increased consumer choice among alternative services, especially mobility.

Furthermore, ALLTEL will offer new and improved services to benefit consumers. For example, ALLTEL cannot provide Lifeline services and offer Lifeline customers the choice of mobility unless and until it is designated as an ETC.<sup>30</sup> ALLTEL's wireless local calling areas, in

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<sup>27</sup> *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, 45-46 (CCB 2000) ("Verizon Wireless ETC").

<sup>28</sup> *See Virginia Cellular*, 19 FCC Rcd at 1576; *Highland Cellular* ¶ 23. The Commission has long recognized the benefits of wireless services to the public's health and welfare. For example, the Commission has adopted rules to improve the effectiveness and reliability of wireless emergency 911 services. 47 C.F.R. § 20.18.

<sup>29</sup> *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15506-07 (1996).

<sup>30</sup> *See Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, FCC 04-87, ¶ 54 (Apr. 29, 2004) (declining to allow non-ETCs to provide Lifeline/ Link-Up support). The Commission recently modified its rules to make Lifeline service more effective because it "ensures that quality telecommunications services are available to low-income consumers at just, reasonable, and affordable rates." *Id.* ¶ 1.

most, if not all, cases, also will be larger than those of the incumbent LECs.<sup>31</sup> As a result, customers calling within ALLTEL's service area will not be subjected to toll charges that they would otherwise incur when calling outside the wireline carriers' local exchange service areas. In addition, ALLTEL will provide consumers with the choice of multiple calling plans with varying volumes of minutes.<sup>32</sup> In granting other petitions for ETC status, the Commission has emphasized that these factors benefit the public interest.<sup>33</sup>

Although ALLTEL has addressed repeatedly CenturyTel's concern that it is not providing local usage service in Alabama in the manner and to the extent deemed appropriate by CenturyTel,<sup>34</sup> ALLTEL is in fact providing local wireless service in Alabama and the other states where it seeks ETC status. ALLTEL reiterates its commitment to provide, as part of its universal service offering, all services supported by the universal service mechanism when it receives ETC status, including any minimum local usage requirement imposed by the Commission. Contrary to CenturyTel's assertion, the Commission has not quantified a set minimum local usage requirement at this time. Virginia Cellular and Highland Cellular made similar guarantees, which the Commission found sufficient to meet its local usage requirement.<sup>35</sup> CenturyTel, on the other hand, would hold ALLTEL at fault for violating a standard that simply does not yet exist.

**D. Section 214(e) Of The Act Requires A Less Rigorous Public Interest Showing For Non-Rural ETC Petitions Than For Rural ETC Petitions.**

The opponents attempt to obfuscate the clearly differentiated public interest standards applicable to rural and non-rural ETC applications. Section 214(e) of the Act establishes a

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<sup>31</sup> Alabama Petition at 12.

<sup>32</sup> *Id.* at 11-12.

<sup>33</sup> See *Virginia Cellular*, 19 FCC Rcd at 1576; *Highland Cellular* ¶ 23; *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 23532, 23541 (WCB 2002) ("RCC Holdings").

<sup>34</sup> Alabama Petition at 4; Virginia/Alabama Reply at 14.

<sup>35</sup> *Virginia Cellular*, 19 FCC Rcd at 1572; *Highland Cellular* ¶ 15.

framework for states, and where states do not exercise jurisdiction, the Commission, to determine whether a competitive carrier's request for ETC status should be granted. Specifically, Section 214(e)(2) (for ETC designations by states) and Section 214(e)(6) (for ETC designations by the Commission) provide that regulators "shall" designate "more than one" common carrier seeking ETC status in non-rural areas.<sup>36</sup> These provisions also state that regulators "may" designate "more than one" carrier as an ETC in rural areas if such designation is found to be in the public interest.<sup>37</sup> Thus, according to the plain language of the statute, regulators must apply a more stringent public interest analysis to petitions for ETC status in rural areas than in non-rural areas. The legislative history of Section 214(e) explains that a request for ETC status in non-rural areas is in the public interest if the requesting carrier meets the criteria set forth in Section 214(e)(1) – *i.e.*, if it offers the services that are supported by the federal universal service support mechanism and advertises such services.<sup>38</sup>

In *Virginia Cellular* and *Highland Cellular*, the Commission recognized that the public interest standard for non-rural ETC petitions is less rigorous than the standard for rural areas, and observed that, given its finding that the carriers "satisfied the more rigorous public interest analysis for [the] rural study areas, it follows that [their] commitments satisfy the public interest

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<sup>36</sup> 47 U.S.C. §§ 214(e)(2), 214(e)(6).

<sup>37</sup> *Id.* Verizon fails to conform its own use of the word "shall" as stated in Section 214(e) of the Act with the case law it cites. Verizon Comments at 7. "Shall" in the context of Section 214(e) means that the Commission has more discretion in granting one type of ETC application than in another. The case Verizon cites, *Lopez v. Davis*, 531 U.S. 230, 241 (2001), states that the use of "shall" in a statute imposes "discretionless obligations."

<sup>38</sup> The legislative history of Section 214(e) supports this reading of the statute. *Telecommunications Act of 1996*, Conference Report to Accompany S.652, Report 104-458, 104<sup>th</sup> Cong., 2d Sess. (Jan. 31, 1996), at 141 ("If more than one common carrier that meets the requirements of new section 214(e)(1) requests designation as an eligible telecommunications carrier in a particular area, the State commission shall, in the case of areas not served by a rural telephone company, designate all such carriers as eligible. If the area for which a second carrier requests designation as an eligible telecommunications carrier is served by a rural telephone company, then the State commission may only designate an additional carrier as an eligible telecommunications carrier if the State commission first determines that such additional designation is in the public interest.").

requirements for non-rural areas.”<sup>39</sup> Because ALLTEL, with respect to its non-rural applications, made the same service and advertisement commitments as Virginia Cellular and Highland Cellular did with respect to their rural applications, ALLTEL’s showing *a fortiori* meets the non-rural public interest standard set forth in *Virginia Cellular* and *Highland Cellular*.

#### **IV. THE COMMISSION HAS REPEATEDLY RULED THAT CONSIDERATION OF ETC PETITIONS SHOULD NOT BE DELAYED PENDING REVIEW OF THE JOINT BOARD’S ETC RECOMMENDED DECISION.**

##### **A. There Is No Basis To Further Delay Consideration Of The Petitions.**

The Commission has repeatedly held, and recently reaffirmed in *Virginia Cellular* and *Highland Cellular*, as to which opponents did not seek reconsideration, that it need not delay consideration of ETC petitions pending review of the Joint Board’s *Recommended Decision*.<sup>40</sup> The *Recommended Decision* addresses issues of general *future* applicability that are outside the scope of the instant proceedings. Contrary to Verizon’s repeated assertions, the prospect of future changes cannot be allowed to delay consideration of ALLTEL’s narrow requests to be designated under *today’s* existing rules as an ETC in non-rural areas in Virginia, Alabama, North Carolina, Georgia and Florida.<sup>41</sup>

The Commission also should reject CenturyTel’s argument that it should stay ALLTEL’s and all other wireless carriers’ ETC petitions until it adopts safeguards to ensure that universal service funds are used only to fund services and operations in high-cost areas. As ALLTEL

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<sup>39</sup> *Virginia Cellular*, 19 FCC Rcd at 1575; *Highland Cellular* ¶ 21.

<sup>40</sup> *Virginia Cellular*, 19 FCC Rcd at 1565, 1569, 1577-78 (deciding Virginia Cellular’s ETC petition despite noting that “the outcome of the Commission’s pending proceeding before the Joint Board... could potentially impact the support that Virginia Cellular and other ETCs may receive in the future”); *Highland Cellular* ¶¶ 3, 12, 25 (same). Rather than assert here that delay is necessary, the opponents should have sought reconsideration of *Virginia Cellular*, *Highland Cellular* and prior ETC decisions that rejected delaying consideration of pending ETC petitions.

<sup>41</sup> *Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24405-06 (WCB 2002) (“*Cellular South*”) (“These concerns are beyond the scope of this Order, which designates a particular carrier as an ETC” under the current rules.).

explained in its Virginia/ Alabama Reply, such safeguards already exist.<sup>42</sup> Further, ALLTEL provided a proposal as to how the high-cost funds could be used in its ETC Supplement.<sup>43</sup> If CenturyTel believes that existing safeguards are ineffective or that the Commission should address the impact of having more than one wireless phone per household, it should raise these issues in the pending review of the *Recommended Decision* rather than in individual proceedings for ETC status.<sup>44</sup>

It is a bedrock principle of administrative law that an agency is not permitted “to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, [and] another for Tuesday....”<sup>45</sup> Thus, any delay or denial of these Petitions premised upon the universal service and ETC designation policy grounds raised by the Oppositions would violate “the Commission’s responsibility to assure comparable treatment of similarly situated parties.”<sup>46</sup>

In addition, further delay of review of the Petitions would violate the universal service principle of competitive neutrality.<sup>47</sup> As the Commission has previously recognized, delaying

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<sup>42</sup> Virginia/Alabama Reply at 20-21.

<sup>43</sup> ETC Supplement at 5-6.

<sup>44</sup> See, e.g., *Virginia Cellular*, 19 FCC Rcd at 1565, 1569; *Highland Cellular* ¶¶ 3, 12; *RCC Holdings*, 17 FCC Rcd at 23535 n.27.

<sup>45</sup> *Sharron Motor Lines, Inc. v. United States*, 633 F.2d 1115, 1117 (5th Cir. 1981) (reversing denial of authority where agency, citing insignificant differences between applicant and its competitors, failed to accord them uniform treatment) (quoting *Mary Carter Paint Co. v. FTC*, 333 F.2d 654, 660 (5th Cir. 1964) (Brown, J., concurring), *rev’d on other grounds*, 382 U.S. 46 (1965)). See also, *NLRB v. Sunnyside Packing Co.*, 557 F.2d 1157, 1160 (5th Cir. 1977).

<sup>46</sup> *Revocation of License of Robert J. Listberger, Jr.*, 76 FCC 2d 212, 219 (Rev. Bd. 1980). ALLTEL notes that, in its view, the prohibition against disparate treatment applies both in the context of requests for formal stays and stays effectively created by excessive delay.

<sup>47</sup> *Universal Service Order*, 12 FCC Rcd at 8935 (“The 1996 Act’s mandate to foster competition in the provision of telecommunications services in all areas of the country and the principle of competitive neutrality compel [the Commission] to implement support mechanisms that will send accurate market signals to competitors.”)

consideration of the Petitions would deny ALLTEL competitive entry as an ETC while the ILECs continue to draw on universal service funds:

We would be concerned about a universal service fund mechanism that provides funding only to ILECs. A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support... that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that was not available to their competitors. Thus, non-ILECs would be left with two choices -- match the ILEC's price charged to the customer, even if it means serving the customer at a loss, or offer the service to the customer at a less attractive price based on the unsubsidized cost of providing such service. A mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors. Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government-imposed competitive disadvantage. Consequently, such a program may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a).<sup>48</sup>

Thus, any delay or denial of these Petitions premised upon the universal service and ETC designation policy grounds raised by the Oppositions would fail to treat similarly situated parties comparably and would violate the universal service principle of competitive neutrality.

Verizon's agenda also would undermine the Commission's wireless local number portability ("LNP") policy (now openly endorsed by Verizon Wireless), which is intended in large part to enable wireless carriers to compete directly with wireline carriers.<sup>49</sup> Last year, the

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<sup>48</sup> *Western Wireless Corporation for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd 16227, 16231 (2000) (citations omitted).

<sup>49</sup> *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (subsequent history omitted).



Commission denied permanent forbearance from enforcing its wireless LNP rules, concluding that wireless LNP was an essential element to intermodal competition.<sup>50</sup>

LNP is “hardwired” into the Act for LECs, and now that wireless number portability is in effect,<sup>51</sup> it would be anti-consumer to undercut wireless carriers’ ability to obtain intermodal ports from wireline carriers and thus serve the larger, pro-competitive goals of the 1996 Act, by depriving them of universal service portability. Ultimately, a wireless carrier that captures a high-cost line -- as intermodal number portability promises to promote -- must be positioned to obtain the high-cost support for that line through ETC status. Further delay of the grant of these Petitions will allow Verizon to enjoy the competitive benefits of wireless LNP in a segregated wireless market while retaining the lion’s share of interstate access support in its wireline markets, all without having to face the market-opening effects of ETC status for ALLTEL as a wireless carrier. The Commission should not permit Verizon to manipulate competitive policies in this manner.

The Commission has previously committed to resolve ETC petitions within a six-month time frame.<sup>52</sup> This commitment derives from the Commission’s recognition that “excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas.”<sup>53</sup> ALLTEL’s Petitions for Virginia and

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<sup>50</sup> *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, 17 FCC Rcd 14972, 14978-80 (2002) (“*Verizon Forbearance Order*”), *aff’d sub nom., Cellular Telecommunications & Internet Association and Cellco Partnership, d/b/a Verizon Wireless v. FCC*, 330 F.3d 502, 513 (D.C. Cir. 2003) (“*CTIA*”). The Commission granted a limited extension of the wireless LNP deadline until November 24, 2003. *Id.* at 14981.

<sup>51</sup> See FCC News Release, *FCC Reports on Status of Local Number Portability*, May 13, 2004 (reporting that more than two million wireless ports have taken place since November 23, 2003, including wireline customers porting numbers to wireless carriers).

<sup>52</sup> *RCC Holdings*, 17 FCC Rcd at 23535 n.27 (citing *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, 15 FCC Rcd 12208, 12265 (2000) (“*Promoting Deployment*”)).

<sup>53</sup> *Promoting Deployment*, 15 FCC Rcd at 12255-56.

Alabama have been pending for thirteen months; its Petitions for North Carolina and Georgia have been pending for almost nine months; and the Florida Petition has been pending for almost six months. The Commission's six-month commitment thus is long past for the majority of the Petitions. Accordingly, the Commission should reject the Oppositions' requests to further delay consideration of the Petitions and grant them expeditiously.

**B. The Wireline Competition Bureau Can Rule On The Petitions Pursuant To Delegated Authority.**

With the establishment of a standard for review for ETC petitions in *Virginia Cellular* and *Highland Cellular*, the Wireline Competition Bureau ("Bureau") can rule on the pending Petitions pursuant to delegated authority. Section 0.291(a)(2) of the Commission's rules authorizes the Bureau to act on any application that does not "present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."<sup>54</sup> ALLTEL's Petitions do not raise issues of fact, law or policy that were not addressed in *Virginia Cellular* and *Highland Cellular*. Therefore, the Bureau can follow the guidelines the Commission established in *Virginia Cellular* and *Highland Cellular* to rule expeditiously on the Petitions.

**V. GRANT OF ALLTEL'S PETITIONS WILL NOT HARM THE UNIVERSAL SERVICE HIGH-COST FUNDS.**

**A. ALLTEL's Designation As An ETC In Non-Rural Areas Will Not Harm the High-Cost Support Mechanism.**

ALLTEL's designation as an ETC in non-rural areas in Virginia, Alabama, North Carolina, Georgia and Florida will not have a significant impact on universal service high-cost support. As ALLTEL noted in its ETC Supplement, the financial impact of granting the Petitions would be minimal because ALLTEL would receive less than .57 percent of the total high-cost funds if all of its Petitions were granted as to non-rural areas, which is roughly

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<sup>54</sup> 47 C.F.R. § 0.291(a)(2).

comparable to the amount the Commission concluded in *Virginia Cellular* would not dramatically burden the high-cost funds.<sup>55</sup>

ALLTEL notes that the impact of additional ETCs on high-cost funding is primarily a rural issue. *Virginia Cellular* and *Highland Cellular* focused on the high-cost impact issue in connection with the rural service areas addressed in those proceedings, not the non-rural areas.<sup>56</sup> The primary high-cost fund for non-rural areas is the interstate access support (“IAS”) fund established in the *CALLS Order*, which is capped at \$650 million (discussed below). Moreover, the opponents’ concern over the growth in the high-cost funds appears to be motivated more by their desire to prevent competitive carriers from receiving high-cost support for the provision of alternative services in high-cost areas than by any public interest concern over the size of the fund, given how much high-cost support ILECs receive. When various ILECs unsuccessfully challenged limits on their own high-cost support in *Alenco*,<sup>57</sup> the court rebuked them, noting that they “seek ... not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act.”<sup>58</sup>

Furthermore, it is inappropriate and contradictory to Commission precedent to weigh the cumulative effect of all wireless ETC petitions on universal service support against an individual ETC applicant as Verizon suggests.<sup>59</sup> As an initial matter, there is no guarantee that all pending

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<sup>55</sup> ETC Supplement at 6-7. The Commission concluded that designating Virginia Cellular as an ETC would not burden universal service funding because Virginia Cellular would at most receive approximately .105 percent of the total high-cost funds for its ETC operations in Virginia. This percentage is roughly comparable to ALLTEL receiving approximately .57 percent of available support based on ETC status in five states. *See Virginia Cellular*, 19 FCC Rcd at 1577 n.96.

<sup>56</sup> *Id.* at 1578; *Highland Cellular* ¶ 25.

<sup>57</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000) (“*Alenco*”).

<sup>58</sup> *Id.* at 622.

<sup>59</sup> *Cf. Virginia Cellular*, 19 FCC Rcd at 1577 n.96 (considering only whether designating the applicant as a competitive ETC would affect the universal service funds); *Highland Cellular* ¶ 25 n.73 (same).

ETC requests will be granted. Even in the event they are granted, it violates the principle of competitive neutrality to make such a comparison. The Commission does not review the level of universal service support incumbents receive as a whole before allocating funds to them. It would be discriminatory to decide an individual ETC request from a wireless carrier on the basis of the ETC requests of other wireless carriers, or to require a wireless applicant to justify the actions and needs of the entire wireless industry.

The Commission concluded in *Virginia Cellular* and *Highland Cellular* that any future revisions that are made to the universal service high-cost mechanism, including any reductions in support, will equally apply to all ETCs at that time.<sup>60</sup> Thus, any purported impact that wireless ETCs may have on the high-cost mechanisms will be resolved.

CenturyTel also erroneously claims that mobility harms the universal service mechanism.<sup>61</sup> ALLTEL addressed this argument in its Virginia/Alabama Reply, where it explained that it is utterly baseless to presume that universal service funds will go to support services outside ETC areas.<sup>62</sup> Furthermore, simply because a household may have more than one wireless phone does not diminish the public interest benefits associated with granting a wireless carrier ETC status. Section 254(b) of the Act requires the Commission to promote access to telecommunications services for “[c]onsumers, not “households.”<sup>63</sup> The Commission explicitly recognized in *Virginia Cellular* and *Highland Cellular* that it is the mobility of a wireless phone that brings so many unique benefits to consumers that are unavailable from a wireline phone.<sup>64</sup> Mobility thus cannot also be a detriment to the public interest, as CenturyTel argues.

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<sup>60</sup> *Virginia Cellular*, 19 FCC Rcd at 1565, 1569, 1577-78; *Highland Cellular* ¶¶ 3, 12, 25.

<sup>61</sup> CenturyTel Comments at 5-6.

<sup>62</sup> *Virginia/Alabama Reply* at 20-21.

<sup>63</sup> 47 U.S.C. § 254(b)(3). Moreover, CenturyTel’s focus on households as an appropriate unit to measure wireless service penetration is inconsistent with the emerging telecommunications marketplace emphasis on individualized services and personal telephone numbers.

<sup>64</sup> *Virginia Cellular*, 19 FCC Rcd at 1576; *Highland Cellular* ¶ 23.

**B. The Oppositions' Self-Serving Concerns Regarding The CALLS Fund Are Without Merit.**

The Oppositions argue that because the IAS fund is capped at \$650 million under the *CALLS Order*, designation of more wireless ETCs will siphon off ever greater portions of the fund from the intended beneficiaries, namely, the price cap LECs.<sup>65</sup> ILECs, however, do not have an exclusive entitlement to universal service support that supersedes any other consideration. Moreover, Verizon's predecessors enthusiastically lobbied for the adoption of the CALLS Plan partly on the grounds that IAS *expressly* would be portable, stating that:

The CALLS plan further promotes competition through the establishment of a portable \$650 million rural and high cost universal service fund. For the first time, *entrants will be able to compete for and receive support that previously went only to the incumbent LEC through implicit support*. All eligible telecommunications carriers will receive universal service support when they win and serve a customer in a more costly rural area. The 1996 Act envisioned that consumers in all parts of the country would be able to have a choice of telecommunications provider. The CALLS plan brings that vision a significant step closer to reality.<sup>66</sup>

The Commission agreed and explicitly acknowledged in the *CALLS Order* that the capped interstate access fund is portable to other ETCs, including wireless ETCs, thereby possibly diminishing the support received by price cap LECs, and emphasized the competitive benefits of such portability.<sup>67</sup> ETC status has been granted to other wireless carriers serving price cap LEC service areas, including Verizon's own wireless affiliate, without any delay or other comment on the impact on IAS.<sup>68</sup> In fact, the Oppositions hold even less weight now

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<sup>65</sup> Verizon Comments at 2-3; CenturyTel Comments at 4. Verizon and CenturyTel simply regurgitate the same argument Verizon raised in opposition to ALLTEL's Virginia Petition. For the sake of completeness, however, ALLTEL will again respond to these allegations.

<sup>66</sup> Comments of the Coalition for Affordable Local and Long Distance Services (CALLS), CC Docket Nos. 94-1, 96-45, 96-262, 99-249, at 10 (Nov. 12, 1999) (emphasis added).

<sup>67</sup> *CALLS Order*, 15 FCC Rcd at 13039, 13053.

<sup>68</sup> See, e.g., *Verizon Wireless ETC*, 16 FCC Rcd at 44 n.31, 46; *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier*, 17 FCC Rcd 21435, 21440 (WCB 2002) (designated as ETC in the service area served by BellSouth).

because the Commission has stated that it will consider adjusting the cap on IAS in 2005.<sup>69</sup> The concern that price cap LECs will receive less IAS whenever a non-rural ETC designation petition is granted accordingly does not raise a public interest concern; in fact, this was the bargained-for result under the CALLS Plan.

Furthermore, Verizon's and CenturyTel's concern that ALLTEL's designation as an ETC in non-rural areas will negatively impact IAS is especially inappropriate in light of their market presence and representations.<sup>70</sup> For its *non-rural* operations, Verizon will receive an estimated \$252 million in IAS in 2004, which represents more than 57 percent of all non-rural IAS funding to be allocated in 2004, and almost 39 percent of the total amount available under the *CALLS Order*.<sup>71</sup>

Any IAS that ALLTEL receives upon being designated as an ETC in non-rural areas will be insignificant to much larger carriers such as Verizon. CenturyTel also threatens to raise rates to make up for any reduced IAS funding that may result from ALLTEL's designation as an ETC, rather than attempting to operate more efficiently.<sup>72</sup> CenturyTel's warning is a perfect example of why additional competition in Alabama and other areas is required. The opponents' claims illustrate that their real goal is to continue to be the exclusive recipients of universal service support subsidies to the detriment of the public interest.

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<sup>69</sup> *Access Charge Reform*, Order on Remand, 18 FCC Rcd 14976 (2003) (reaffirming the validity of the \$650 million cap on IAS on remand from the Fifth Circuit and noting that the Commission would adjust the cap at the end of the 5-year CALLS transition period as appropriate).

<sup>70</sup> CenturyTel makes the unsupported claim that "ILECs would receive only 59 cents per dollar of IAS to which they otherwise would have been entitled" if all petitions from wireless carriers for ETC status were granted. CenturyTel Comments at 4. As noted above, ILECs do not have an exclusive entitlement to IAS.

<sup>71</sup> Universal Service Administrative Company, *Interstate Access Support Projected by State by Study Area: First Quarter 2004*; Appendix HC12 (Oct. 31, 2003), *available at* <http://www.universalservice.org/overview/filings/2004/Q1/>.

<sup>72</sup> CenturyTel Comments at 4.

**VI. CONCLUSION.**

The Commission should support ALLTEL's efforts to enhance competition in underserved areas by promptly granting its Petitions for non-rural service areas in Virginia, Alabama, North Carolina, Georgia and Florida. The Commission also should deny the Oppositions as parochial attempts to deny universal service support to a carrier that challenges the ILECs' market dominance.

Respectfully submitted,

Glenn S. Rabin  
Vice President, Federal  
Communications Counsel  
ALLTEL Corporation  
601 Pennsylvania Avenue, N.W.  
Suite 720  
Washington, DC. 20004  
(202) 783-3970

By: /s/ Cheryl A. Tritt  
Cheryl A. Tritt  
Frank W. Krogh  
Jennifer L. Kostyu  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Suite 5500  
Washington, D.C. 20007  
(202) 887-1500

Counsel to ALLTEL Communications, Inc.

May 14, 2004

## CERTIFICATE OF SERVICE

I, Theresa Rollins, do hereby certify that I have on this 14<sup>th</sup> day of May, 2004, had copies of the foregoing **REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.** delivered to the following via First Class Mail or electronic mail(\*), as indicated:

\*William Maher  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Via Electronic Mail: [William.Maher@fcc.gov](mailto:William.Maher@fcc.gov)

\*Carol Matthey  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Via Electronic Mail: [Carol.Matthey@fcc.gov](mailto:Carol.Matthey@fcc.gov)

\*Eric Einhorn  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Via Electronic Mail: [Eric.Einhorn@fcc.gov](mailto:Eric.Einhorn@fcc.gov)

\*Narda Jones  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Via Electronic Mail: [Narda.Jones@fcc.gov](mailto:Narda.Jones@fcc.gov)

\*Anita Cheng  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Via Electronic Mail: [Anita.Cheng@fcc.gov](mailto:Anita.Cheng@fcc.gov)

\*Thomas Buckley  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Via Electronic Mail: [Thomas.Buckley@fcc.gov](mailto:Thomas.Buckley@fcc.gov)

\*Shannon Lipp  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Via Electronic Mail: [Shannon.Lipp@fcc.gov](mailto:Shannon.Lipp@fcc.gov)

Sheryl Todd (3 copies)  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-B540  
Washington, DC 20554

Michael E. Glover  
Edward Shakin  
Ann Rakestraw  
Verizon  
1515 North Courthouse Road, Suite 500  
Arlington, VA 22201

Helgi C. Walker  
Eve Klindera Reed  
Wiley Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, D.C. 20006

*Counsel to Verizon*



CenturyTel of Alabama, LLC  
John F. Jones  
Vice President, Federal Government Relations  
100 Century Park Drive  
Monroe, LA 71203

Karen Brinkmann  
Jeffrey A. Marks  
Latham & Watkins LLP  
555 11<sup>th</sup> Street, N.W., Suite 1000  
Washington, D.C. 20004

*Counsel to CenturyTel of Alabama, LLC*

\*Qualex International  
Portals II  
445 12<sup>th</sup> Street, SW  
Courtyard Level  
Washington, DC 20554  
Via Electronic Mail: [qualexint@aol.com](mailto:qualexint@aol.com)

/s/ Theresa Rollins  
Theresa Rollins